



28,460-A

Art Unit 3721

Examiner Paul R. Durand

Paper No.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kenneth Kutner

Serial No.: 10/786,929

**APPLICANT'S APPEAL
BRIEF**

Filed: 02/26/2004

Commissioner for Patents
P. O. Box 1450 - Mail Stop Fee Amendment
Alexandria, VA 22313-1450

Sir:

The following is Applicant's appeal brief filed concurrently with Applicant's Notice of Appeal in response to Examiner's final action of January 11, 2005 pursuant to 37 C.F.R. 1.192.

REAL PARTY IN INTEREST

The real party in interest is the Applicant, Kenneth Kutner.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant or appellant's legal representative, or assignee, which will directly affect or be directed affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Presently pending are claims 1 to 3, inclusive, all of which are the subject of the present appeal.

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STATUS OF AMENDMENTS

There have been no amendments filed subsequent to final rejection.

-2-

28,460-A

SUMMARY OF THE INVENTION

Briefly stated, the invention contemplates the provision of an improved relatively light-weight collapsible container for one-time usage, which, in collapsed condition, occupies a relatively small storage space, but which is readily erected for filling using a sanitary inner liner and which is filled after positioning the liner within the erected container to be subsequently sealed after filling. The containers and liners are readily stored in a stacked condition, and in the case of the liners, in spooled condition, for assembly at a filling station immediately prior to filling to permit rapid processing.

ISSUES

The sole issue on appeal is the propriety of the final rejection of claims 1 to 3 based on art of record.

GROUPING OF THE CLAIMS

For purposes of the present appeal, claims 1 to 3 stand or fall together.

ARGUMENT

Claim Rejections - 38 U.S.C. 102

In his final rejection, Examiner has rejected claim 1, under Section 102(b) as being anticipated by Akoh, et. al (U.S. 4,089,256). Examiner has stated that in regard to claim 1, Akoh discloses the invention as claimed, including filling station 52, a stack of collapsible containers 22, plastic bag liners 48, placing the liner in the container, filling the container with material from station 52, and closing the container (see Figure 1, and C3, L21-C4, L30).

-3-

28,460-A

In response, it is submitted that Akoh does not disclose his step (d) of serially placing the collapsed containers in erected condition beneath a hopper. Akoh contemplates an assembly line using relatively small containers which package goods for retail distribution.

Applicant's invention is directed to an improved method for bulk packaging of lightweight particulate material (see Applicant's specification, page 1, lines 8-11). Applicant's method includes the stacking of a small supply of relatively large containers adjacent the hopper station on one side thereof, and a supply of bags on an opposite side of the filling station. Each of the containers is manually erected beneath the hopper, following which a large liner is individually placed in the erected container for filling. The filled container is then sealed and closed in known manner, and transported from the hopper station, not on a conveyor belt, but depending upon weight, using a forklift truck. While the Kupersmit reference suggests this type of container, it does not teach the maintaining of a relatively small stack of such containers in folded condition adjacent the hopper station to be erected beneath the hopper, following which the liner is inserted for filling and sealing. The prior art practice includes assembling a relatively large number of large containers, inserting the liner in the containers, and moving the assembled containers and liner beneath the hopper, a cumbersome procedure. Applicant's method allows for the containers to be maintained in collapsed condition until just prior to filling, thereby making it possible to store a much larger number of containers in a given space surrounding the hopper station.

-4-

28,460-A

Applicant describes the prior art commencing in page 1 of his specification at line 12. As mentioned, the loaded containers normally weigh several hundred pounds as a result of bulk packaging. It is submitted that claim 1 is not anticipated by Akoh, who shows the packaging location referred to in Applicant's specification, lines 10 and 11. In a Section 102 rejection, the reference relied upon should generally show what Applicant is doing. No such suggestion appears in Akoh.

Claim Rejections - 35 U.S.C. 103

Examiner has rejected claim 2, under Section 103(a) as being unpatentable over Akoh, in view of Kupersmit (U.S. 5,090,614). Examiner explains that Akoh discloses the invention substantially as claimed, including the use of a conveyor 34 to move packages down a manufacturing line. What Akoh does not disclose is the use of a slip sheet. However Kupersmit teaches that it is old and well-known in the art of packages to have an integrated slip sheet 52 for the purpose of moving a box. Therefore, Examiner states that it would have been obvious to one having ordinary skill in the art at the time of the invention to have produced the invention of Akoh with the slip sheet as taught by Kupersmit for the purpose of moving a box.

In response, it is submitted that there is no suggestion in Kupersmit to put a slip sheet on a commercial container which contains only eight or ten ounces of product, nor is there any need to do so. There is no need for a slip sheet with such a small container. It is, therefore, submitted that there is no teaching in Kupersmit which could be combined with Akoh, nor would the desirability or necessity of doing so be apparent to one skilled in the art.

-5-

28,460-A

Examiner has rejected claim 3, under 35 U.S.C. 103(a) as being unpatentable over Akoh, in view of Henie, et al. (U.S. 4,287,703). Examiner has explained that Akoh discloses the invention substantially as claimed, including closing the end of the bag liner after it has been filled. What Akoh does not disclose is the sealing of the bag by heat. However, Henie teaches that it is old and well-known in the art of packages to use heat sealing at a seal station 22 to close bags after they have been filled, for the purpose of reducing contamination and spillage. Therefore, Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Akoh with sealing means as taught by Henie for the purpose of reducing contamination and spillage.

In response, Applicant submits that his disclosure in page 1, lines 12-21 acknowledge that it is known to use a container, a separate synthetic resinous liner, and sealing the liner prior to closing the container. Akoh also contemplates closing his bag within the container at some point at an assembly-line station.

What Applicant does and is presently claiming, is something not capable of being performed using assembly-line procedures. The erection of the container is made after the container has been positioned beneath the hopper. While in this condition, the liner element is inserted and spread for filling. After filling, the liner is closed and sealing, and subsequently the container is also closed, as is known in the art. All of the above is performed at a single station beneath the hopper as manual operations. What Akoh teaches is applicable to a location to which Applicant's package is transported. At that point, the contents of Applicant's container are poured into a hopper suitable for filling small packages, at which point the teachings of Akoh are useful.

-6-

28,460-A

It is submitted as apparent that Akoh does not contemplate doing what Applicant is doing. The essence of Applicant's invention is the provision of a method which permits the elimination of the need of separating and erecting containers and storing them in erected condition to occupy a very substantial amount of space. Instead, the containers are positioned adjacent the hopper for serial erection beneath the hopper, and insertion of a liner which is also stored adjacent to the hopper. There is no suggestion of this method in Akoh. What Applicant is doing in a general sense, is known, but the specific way in which he performs the filling of large containers of particulate material is not suggested by any of the references cited.

Examiner's Response To Applicant's Arguments

It is believed that Examiner has misunderstood Applicant's position. Applicant has not argued regarding claim 1 that the primary reference of Akoh does not disclose the serial conveyance of containers. Applicant's position is that the containers are not serially conveyed, i.e. upon a conveyor belt. Applicant's containers are stacked adjacent the filling hopper, and are manually placed beneath the hopper, following which they are moved to erected condition, which is something quite different. Examiner as asserted that given the broadest reasonable interpretation of the phrase "serially", it falls within the teaching of Akoh. What Examiner apparently misunderstands is that Applicant's containers are not conveyed. They are manually positioned at a filling station.